IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1975 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HITESH JETHALAL JOISAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1975 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/05/2002

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 25-1-2002 passed by the District Magistrate, Jamnagar in exercise

of powers under Section 3(2)) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. Heard Mr.H.R.Prajapati, learned advocate for the petitioner, Mr.S.J.Dave, learned AGP for the respondent Nos.1 to 3 and Ms.P.J.Davawala, learned Addl. Central Govt. Standing Counsel for the respondent No.4.

3. Though the learned advocate for the petitioner has taken various contentions in the petition, at the time of arguments, he has restricted his argument on the point of delay in forwarding the representation. Drawing my attention towards para 4(u) of the petition, Mr.Prajapati has argued that a representation dated 30-1-2002 was sent to the detaining authority, copy of which has been annexed with the petition at Annexure-C, page 26 and it has been delivered to the authority on 1-2-2002, copy of the acknowledge receipt is annexed at Annexure-E with this petition. According to him, though the authority has received the representation dated 30-1-2002 on 1-2-2002, same has been forwarded to the State Government by the detaining authority on 6-2-2002 and hence, there is a delay in forwarding the representation. He has further argued that though the detaining authority has jurisdiction to decide the representation till 6-2-2002, he has not utilised the same in deciding the representation and no explanation has been putforward by the detaining authority in not forwarding the representation till 6-2-2002.

4. It has been held in a case of Urmilaben Navnitlal Gandhi Vs. The Commissioner of Police, Surat City and Others, 1994(2) G.L.H. (U.J.) 10 at head note (A) as under:

> "(A) Preventive Detention--Gujarat Prevention of Anti-Social Activities Act, 1985--Delay of five days in considering representation not properly explained--Held, detention invalid."

In the above unreported judgment, a representation of the detenu dated 12th October, 1993, which was received by the detaining authority on 14th October, 1993 was rejected on 15th October, 1993. The said representation was forwarded to the State Government on 16th October, 1993, but the office forwarded it to the State Government on 19th/21st October, 1993. It was received by the State Government on 26th October, 1993 and rejected on 27th October, 1993. The Court, applying the ratio in Harish

Pahava Vs. State of Uttar Pradesh, AIR 1981 SC 1126, has observed in the above unreported judgment that the said delay of five days, i.e. from 16th October, 1993 to 21st October, 1993 in forwarding the representation was unreasonable and not properly explained vitiating the continued detention of the detenu.

5. An affidavit-in-reply has been filed on behalf of State by Shri P.G.Vyas, Deputy Secretary to the Govt. of Gujarat, Food, Civil Supplies and Consumer Affairs Department, Gandhinagar. Likewise, affidavit-in-reply is also filed on behalf of the Central Govt. by Shri S.L.Meena, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi. Both these affidavits are ordered to be taken on record.

6. In the instant case, it appears that though representation dated 30-1-2002 has been delivered to the authority on 1-2-2002, it has not been forwarded till 6-2-2002. So, there is a delay in forwarding the representation. It is to be noted that though affidavits have been filed on behalf of the State and on behalf of the Central Govt., no cogent and satisfactory explanation has been putforward in forwarding the representation of the petitioner. As representation of the petitioner has not been forwarded by the authority in time, the rights guaranteed under Article 22(5) of the Constitution of India are violated which make the order of detention illegal.

7. The petition is allowed. The impugned order of detention dated 25-1-2002 passed against the detenu is hereby quashed and set aside. The detenu Hitesh Jethalal Joisar is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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